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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

C. KAUI JOCHANAN AMSTERDAM
Candidate for the US Senate
Plaintiff

vs.

DWAYNE D. YOSHINA
Chief Elections Officer for
the State of Hawaii
Defendant

CIVIL NO. CV06 00519 HG BMK

MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION
AND AMENDED COMPLAINT

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION AND AMENDED COMPLAINT

The Plaintiff, C. Kauai Jochanan Amsterdam, was listed as a NONPARTISAN PARTY BALLOT candidate in the 2006 Primary Election in Hawaii, but inconsistently and unfairly was not treated as a NONPARTISAN PARTY BALLOT candidate listing. Such treatment causes the Plaintiff irreparable harm of not being included in the ballot of the 2006 General Election, of being deprived of the opportunity to be a US Senate candidate in the 2006 General Election and of not being elected US Senator for Hawaii, of not advancing his First Amendment Rights, as Native Hawaiian, not being able to serve our Hawaiian People and our People-at-large of Hawaii Nei, as a Jew, not being

able to use Senate resources to advance the Spirit of Aloha and Peace in Israel, Palestine, and the Arab nations of the Middle East of which actions the Plaintiff is the only candidate with such important and worthwhile goals, and of being deprived of using his education, experience, preparation, and resources as a Senator to keep and make the World a better place in which to live.


The Plaintiff has the likelihood of success on the merits presented herein and of the Amended Complaint. First, points of law provide support for the Amended Complaint. The Doctrine of Equitable Estoppel as also presented in Oxley v General Atlantic Resources, Inc., 936 P. 2d 943, 136 Oil and Gas Rep. 143, 1997 OK 46, Okla., April 08, 1997; First State v. Diamond Plastics, supra at 1272; Apex Siding and Roofing Co. v. First Federal Savings and Loan Ass'n of Shawnee, 301 P. 2d 352. 355 (Okla. 1956) demonstrate that the Election Office's inconsistency of listing the Plaintiff as a NON-PARTISAN PARTY BALLOT candidate then of not treating him as such resulting in the Plaintiff's disadvantage and irreparable harm supports the Plaintiff's Amended Complaint. Secondly, the Plaintiff was listed as a partisan candidate on the ballot before the viewing and voting public by the Elections Office. If it did not consider the candidate partisan, the Elections Office should have listed him as a non-partisan candidate or instructed or educated the voters when they were voting regarding his listing pursuant to Part I. General Provisions II-2 Chief election officer; duties (d) of which the Elections Office did not do. The case of In Re Kelly's Nomination, 24 Pa. D. 205. Pa. com. Pl. 1914 established that a non-partisan candidate should be listed on a Non-Partisan Primary Ballot and not a Non-Partisan Party Ballot. The listing of the Election Office and its treatment of the candidate should be consistent

as the Court determined and not inconsistent as the Elections Office acted. Accordingly, the candidate should be consistently treated as listed by the Elections Office as the case law demonstrates. Thirdly, in the case law of Davis vs State Election Bd. of Oklahoma, 762p. 2d. 932, Okl. 1988 (Sept. 13, 1988), the Court recognized that "the candidate cannot be partisan and non-partisan at the same time". Since it listed the Plaintiff on the official ballot as a NONPARTISAN PARTY BALLOT candidate, but treated him as a non-partisan candidate, the Election Office made the candidate what the Court said he cannot be-parisan and non-partisan at the same time. Thirdly, in the case of State v Torgerson, 57, N.D. 152, 220 N.W. 834, N.D. 1928 (July 28, 1928), the Court ruled that the use of the word "Party" is crucial in changing or eliminating requirements for a non-partisan candidate. Since it used the word "Party" on the official ballot before the voting public, the Election Office acted crucially and changed the designation and requirements associated with the use of the word "Party" by its action. Fourthly, in the case of In Re Kay So. 2d 329, Fla., 1987 (June 04, 1987), the Florida Supreme Court ruled it unacceptable and reprimanded in this case actions in which similar ballots were used to make them appear the same, such similarity or giving appearance that partisan Democratic or Republican parties endorsed candidacy in a non-partisan race warranted reprimand. As seen in Exhibit A of the Amended Complaint, the Elections Office grouped all listed parties together under a party label, which would result in the reprimand of the Supreme Court of Florida. Finally, the testimony of Thirty plus Registered Voters seen in Exhibit B of the Amended Complaint and the Affidavit enclosed all show that the listing of the NONPARTISAN PARTY BALLOT candidate had a significant impact on them as voters. After they found out that the Elections Office was

treating the Plaintiff as it had listed him, the Thirty plus Registered Voters felt they were misinformed, misled, and confused by the Elections Office by such action. As seen in the Affidavit enclosed herein which reflects the Thirty plus Registered Voters and the voting public, the voters felt the Plaintiff running unopposed with the NONPARTISAN PARTY BALLOT would proceed to the ballot of the General Election consistent with his listing. Because cross party voting was prohibited, these voters were free to vote for another party without any loss to the Plaintiff. When they found, they were misled by the Election Office as elaborated on the the Amended Complaint, the Thirty plus Registered Voters and the Affidavit advanced their displeasure regarding the inconsistent and unfair treatment of the Plaintiff and for being misinformed, misled, and confused by the Elections Office.

Accordingly, to stop irreparable harm, heed the points of law and testimony herein, and utilize the exhibits, Declaration, files, records, and principle of justice, the Plaintiff humbly asks support for the Motion for Preliminary Injunction, the Amended Complaint, the avoidance of irreparable harm, and relief by advancing the Plaintiff as a candidate on the ballot of the 2006 General Election in Hawaii.

Dated: Honolulu, Hawii October 27, 2006


C. Kauli Jocharan Amsterdam
US Senator Candidate
Plaintiff

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